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No. 1268

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970.

DELANO, INC.,

Petitioner,

vs.

WALTER C. ARNOLD,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

BRIEF OF RESPONDENT, WALTER C. ARNOLD IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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THE CHURCHILL-BLAKELY PRINTING COMPANY, CHICAGO

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Cases.

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BRIEF IN OPPOSITION.

Respondent Arnold owned land in Chicago which in June, 1966 was sold to Petitioner for $2,425.99 for unpaid taxes. Under Illinois law the period of redemption, as extended, did not expire until October 9, 1968. On May 3, 1968 the City of Chicago filed eminent domain proceedings against the property, making both Arnold and the Petitioner parties defendant thereto.

On September 9, 1968 a judgment was entered in the condemnation proceeding for $17,600, which amount was deposited by the City of Chicago with the County Treasurer on September 12, 1968. The County Treasurer, on October 9, 1968, delivered its check to the County Clerk for $5,242.38 to reimburse Petitioner in full for its interest

in the property. Said amount was based on the County Clerk's estimate of the amount required to redeem as provided in Ill. Rev. Stat. Chapter 120 § 751 (See Respondent's Appendix A). This amount is more than double the amount paid at the tax sale as it included interest, penalties and costs.

Petitioner here claims that the failure to award him the entire $17,600 was a violation of the constitutional provision prohibiting any state from passing any law "impairing the Obligations of Contract" (Art. I, § 10).

1. The Illinois legislature did not pass any statute narrowing Petitioner's right after the Petitioner's purchase at the tax sale in 1966. The Illinois Supreme Court, in the instant case, has construed the Illinois statutes, which were in effect prior to 1966, as not requiring the original owner or other interested party to go through the futile motion of redeeming property after it has been taken by a public body in eminent domain. Since the statutory right of redemption is cut off by the condemnation, it was reasonable to construe Illinois statutes regulating the tax titles, tax redemptions, and eminent domain proceedings in combination as allowing the tax purchaser in such circumstances the amount to which he would have been entitled if the owner had redeemed the property, leaving the remainder to the owner. This is likewise the purport and intention of Section 270 of the Illinois Revenue Act (Ill. Rev. Stats., Ch. 120, § 751), the pertinent part of which is attached hereto as Respondent's Appendix A.

The Petitioner, like any owner or mortgagee, acquired and held its interest subject to the possibility that it might be cut off by eminent domain proceedings, so long as Petitioner received just compensation for its interest in the property out of the award. Petitioner clearly took the risk that the Illinois statutes would be given this reasonable

construction,[1] as had the statutes of New York and California. (See *infra*).

2. Petitioner asserts a conflict between the instant decision and the decision of the Ninth Circuit in *Weber* v. *Wells*, 154 F. 2d 1004 (9th Cir., 1946), on the one hand, and the decision of the Second Circuit in *United States* v. *Certain Lands in Town of Hempstead*, 129 F. 2d 918 (2d Cir., 1942). However, each of those cases merely interpreted the statutes of the particular state involved; none of them purported to pass upon a federal constitutional question.

The *Weber* case distinguished *Hempstead* on the ground that the Second Circuit Court of Appeals

> ". . . had occasion to construe certain statutes of the state of New York. In the instant case we are governed by applicable California statutes. We are not persuaded that the statutes under consideration in the *Hempstead* case, *supra*, and the governing California statutes in the instant case require the same interpretation."

Furthermore, the *Hempstead* decision has been repudiated by the New York courts as an interpretation of New York law, explicitly in *Knocklong Corp.* v. *Seaman*, 6 N. Y. Misc. 2d 895, 162 N. Y. Supp. 2d 71 (Sup. Ct., Nassau County, 1957), which case is cited with approval on this point by the New York Court of Appeals in *In re County of Nassau*, 24 N. Y. 2d 621, 249 N. E. 2d 426, 428 (1969). The New York law, as stated in the latter case, is that (249 N. E. 2d at 428):

> ". . . Appellants' tax lien was, therefore, extinguished by the taking of the subject property in emi-

1. Mr. Justice Schaefer's opinion notes that "the issue presented is one of first impression" in Illinois (Pet. 2a).

> nent domain, but substituted in its place was an equitable lien on the proceeds of the condemnation award to the extent of the tax lien and interest thereon. . . ."

This is what the Supreme Court of Illinois held to be the law of Illinois in the case at bar.

The decision below presents no federal constitutional question, and there is no conflict of decisions on the constitutional issue which the petitioner seeks to raise. The petition for certiorari should therefore be denied.

Respectfully submitted,

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APPENDIX A.

Pertinent portion of Section 270 of the Illinois Revenue Act (Illinois Revised Statutes, Ch. 120, § 751):

"No final judgment or decree of court in any case either at law or in equity or in proceedings under the Eminent Domain Act involving the title to or interest in land in which such party holding such tax deed* shall have an interest or setting aside any tax deed* procured under this Act shall be entered until the claimant shall make *reimbursement to the party holding such tax deed** and payments as herein provided in so far as it shall appear that the holder of such deed or his assignors shall have properly paid or be entitled to in procuring such deed. The county clerk is entitled to a fee of $10 for preparing the *estimate of the amount required to redeem,* and such estimate of the county clerk is prima facie evidence in all courts of the amounts due the tax title holder." (Emphasis supplied.)

* Construed to include tax sales certificates as well as tax deeds. *Tubbs* v. *Dunlop,* 325 Ill. App. 53, 59 N. E. 2d 514 (1945), *Chicago Land Clearance Commission* v. *Narodski,* 57 Ill. App. 2d 302, 307, 207 N. E. 2d 81 (1965).